Supreme Court, U.S.
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No.

IN THE

Supreme Court of the United States

TRAVIS WERTH,
Petitioner,

v.

JANE F. GARVEY, ADMINISTRATOR,
FEDERAL AVIATION ADMINISTRATION,
Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

APPENDIX

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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-10607
Non-Argument Calendar

FAA No. SE-15013

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

JUL 21 2000

THOMAS K. KAHN
CLERK

TRAVIS WERTH,

Petitioner,

versus

JANE F. GARVEY, Administrator,
Federal Aviation Administration,

Respondent.

On Petition for Review from an Order
of the National Transportation Safety Board

(July 21, 2000)

Before BIRCH, DUBINA and CARNES, Circuit Judges.

PER CURIAM

This case is before us on a petition for review of an order of the National Transportation Safety Board ("NTSB"). In his petition, Travis Werth ("Werth") contends that the Federal Aviation Administration ("FAA") wrongfully issued an order suspending his airline transport pilot (ATP") certificate for thirty days for violating 14 C.F.R. §135.73 (1996). The FAA contends that Werth violated the regulation on July 18, 1996 at V.C. Bird International Airport, Antigua, when he refused FAA Aviation Safety Inspector Paul Hlavaz's ("Hlavaz") request to conduct a ramp inspection of a Learjet aircraft. At the time of the attempted ramp inspection, Werth was the first officer of the aircraft.

A hearing was conducted before an administrative law judge ("ALJ"), at the conclusion of which the ALJ affirmed the violation of section 135.73 and the thirty-day suspension of Werth's ATP certificate. Werth appealed the ALJ's decision to the full NTSB, which affirmed the ALJ's order affirming the FAA's order of suspension. Werth now seeks this court's review.

This court should hold an agency action to be lawful unless arbitrary, capricious, an abuse of discretion and otherwise contrary to law. *See Union Flights, Inc. v. Federal Aviation Admin.*, 957 F.2d 685, 686 (9th Cir. 1992); *Chritton v. National Transp. Safety Bd.*, 888 F.2d 854, 856 (D.C. Cir. 1989). In matters of regulatory interpretation, this court should defer to FAA's interpretations of its own regulations unless it is plainly erroneous or inconsistent with the regulation. *See Martin v. OSHRC*, 499 U.S. 144, 150 (1991); *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 844-45 (1984).

After reviewing the record in this case, we conclude that the FAA and the NTSB properly determined that Werth violated section 135.73 when he denied

inspector Hlavaz's access to the aircraft for a ramp inspection. Accordingly, we deny the petition for review.

PETITION DENIED.

SERVED: May 13, 1999
NTSB Order No. EA-4766

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 12th day of May, 1999

JANE F. GARVERY, Administrator, Federal Aviation Administration, Complainant, v. TRAVIS WERTH, Respondent.	)	Docket SE-15013

OPINION AND ORDER

The respondent has appealed from the initial decision Administrative Law Judge William E. Fowler, Jr., rendered in this proceeding on March 19, 1998, at the conclusion of an evidentiary hearing.[1] By that decision, the law judge affirmed an order of the Administrator suspending "any and all airman pilot certificates held [by respondent], including Commercial Pilot Certificate No. 367901243," for his alleged failure, in violation of section 135.73 of the Federal Aviation

[1] An excerpt from the hearing transcript containing the initial decision is attached.

Regulations ("FAR," 14 CFR Part 135),[2] to allow a representative of the Administrator to perform a ramp inspection of the aircraft he was preparing to operate for Cirrus Air, also known as Professional Flight Crew Services. For the reasons discussed below, the appeal will be denied.

This case arose from an FAA inspector's attempt to conduct a ramp inspection on N185BA, a Lear Model 35, at VC Bird International Airport, Antigua. Respondent, the co-pilot, was standing outside the aircraft's door waiting for his four passengers when the inspector approached him, showed his credentials, and announced his intention to ramp check the aircraft. Instead of allowing the inspector unrestricted access, however, respondent advised that under his company manual, he could not let the inspector in, only the captain could. Despite several requests, respondent persisted in his refusal to permit the inspector, in the absence of the captain, to enter and inspect the aircraft.[3]

Like the laws judge, we entertain no doubt that respondent's insistence that the inspector wait for the

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[2] FAR section 135.73 provides as follows:

§ 135.73 Inspections and tests.

Each certificate holder and each person employed by the certificate holder shall allow the Administrator, at any time or place, to make inspections or tests (including en route inspections) to determine the holder's compliance with the Federal Aviation Act of 1958, applicable regulations, and the certificate holder's operating certificate, and operations specifications.

[3] The captain also denied the inspector access to the aircraft when he arrived some 10 to 15 minutes later after completing some business with Customs. He claimed, without foundation, subsequent inquiry revealed, that his company's operations specifications only allowed the aircraft to be inspected in Fort Lauderdale, Florida.

captain before entering the aircraft to fulfill his inspection duties constituted a refusal to allow an inspection that FAR section 135.73 obligated him to permit. Moreover, we agree with the law judge that respondent's state of mind is not relevant. In this regard we note that not only did the respondent's company manual not in any way purport to limit his authority to grant access to an aircraft for a ramp inspection, it set forth in full the FAR which is the basis for this certificate action.[4] Thus, it is difficult to escape the conclusion that respondent either knowingly misrepresented his company's written policy or was unjustifiably ignorant of it, given his obligation to be familiar with the federal regulations it mirrors. Neither possibility would serve to excuse the respondent from the unequivocal regulatory requirement that he allow an inspection "at any time or place."

In view of the foregoing, we disagree with the suggestion of counsel for respondent that the sanction should be reduced or converted to a civil penalty because respondent believed he was complying with the law. Nevertheless, assuming, arguendo, that respondent misapprehended the nature of his responsibility, we would not agree that this would be an appropriate case in which we would reduce sanction. This is not a case in which an airman was simply misinformed as to regulatory requirement. This case involves an airman who, without convincing justification, chose to disregard the advice of a representative of the Administrator as to the scope of his authority to conduct an inspection before an aircraft was operated in commercial service. Reducing

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[4] The company manual also includes the full text of FAR section 1374, which, according to the testimony by the inspector in this matter, sets forth a pilot-in-command's obligation to allow an en route inspection when so requested by an FAA inspector presenting proper credentials.

respondent's sanction, in these circumstances, would effectively minimize his defiance of a request he now concedes, and should have known, was a lawful one. We decline the invitation to take an action which could be construed as endorsing unjustified or insubstantial challenges to an FAA inspector's authority that impede or preclude the timely performance of vital and necessary safety functions.

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied;

2. The initial decision and the order of the Administrator are affirmed; and

3. The 30-day suspension of respondent's airman certificate shall begin 30 days after service date indicated on this opinion and order.[5]

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSHMIDT, GOGLIA, and BLACK, members of the Board, concurred in the above opinion and order.

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[5] For purposes of this opinion and order, respondent must physically surrender his certificate to a representative of the Federal Aviation Administration, pursuant to FAR § 61.19(f).

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 00-10607-JJ

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
SEP 19 2000
THOMAS K. KAHN
CLERK

TRAVIS WERTH,

Petitioner,

versus

JANE F. GARVEY, Administrator,
Federal Aviation Administration,

Respondent.

On Petition for Review from an Order
of the National Transportation Safety Board

BEFORE: BIRCH, DUBINA and CARNES, Circuit Judges.

PER CURIAM:

The petition(s) for rehearing filed by Petitioner is DENIED.

ENTERED FOR THE COURT

s/Justice Dubina
UNITED STATES CIRCUIT JUDGE

SERVED: December 15, 1999
NTSB Order No. EA-4766

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 7th day of December, 1999

JANE F. GARVERY, Administrator, Federal Aviation Administration, Complainant, v. TRAVIS WERTH, Respondent.	)	Docket SE-15013

ORDER DENYING RECONSIDERATION

By Order EA-4766 (served May 13, 1999), the Board denied respondent's appeal from the law judge's decision that he had, as alleged by the Administrator, violated 14 C.F.R. § 135.73 by refusing to allow an FAA inspector to perform a ramp check. In a petition for reconsideration of our order, opposed by the Administrator, respondent argues, in effect, that our decision may have an unintended, adverse impact on air safety because it could be read as requiring pilots to permit an inspection even though they believe the individual claiming to be an inspector may pose a security threat. We fail to understand how our

decision could be so read. The only issue decided in this case was whether respondent's company manual justified his conduct. Our determination that it did not has no bearing on the propriety of a refusal to allow access for reasons that were not litigated. Respondent's petition, in other words, does not in this connection identify any error or matter in our original decision in need or correction, and, in our judgment, it does not otherwise establish that it should be altered in any way.

ACCORDINGLY, IT IS ORDERED THAT:

The petition for reconsideration is denied.

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHIDT and BLACK, Members of the Board, concurred in the above order. GOGLIA, Member did not concur, and submitted the following dissenting statement:

I would grant the petition for reconsideration. The respondent's refusal to allow the inspector access to the aircraft was the result of his mistaken belief that under his company manual only the captain could grant such access. In fact, the manual provision he apparently had in mind did not limit is authority to allow an inspector to check out a company aircraft on a ramp. Rather, it simply contained a specific directive to the pilot in command of company aircraft to permit free and uninterrupted access to the pilot compartment to FAA inspectors who would be performing enroute inspections. I do not think the respondent, who otherwise was cooperative and polite in dealing with the inspector (and provided, save the logbooks, everything else requested), should be sanctioned for his misinformed effort to follow what he erroneously believed the manual required of him, especially since it would not have unduly burdened

the inspector to delay the inspection until the caption returned to the aircraft.

FINDINGS OF FACT AND CONCULSIONS OF LAW

(1) The Respondent, Travis Werth, admits and it is found of all times material herein, Respondent was and is the holder of Commercial Pilot's Certificate Number 376901243. Let me digress just a moment and say that here was the holder of commercial pilot's certificate at the time of this violation, July 18th, 1996. He is now ATP rated.

(2) The Respondent admits and it is found that on or about July 18th, 1996, Respondent operated civil aircraft N185BA, a Leer model 35, on a Part 135 flight departing V.C. Byrd International Airport Antigua.

(3) It is found that prior to said departure, a representative of the Federal Aviation Administration approached the Respondent and informed Respondent that he was conducting a ramp inspection of the aforesaid aircraft.

(4) It is found that the Respondent repeatedly refused the representative's request to enter the aforesaid aircraft.

(5) It is found that as a result, the Respondent, Travis Werth, violated Section 135.75 of Federal Aviation Regulations in that Respondent failed to allow a representative of the Administrator to make an inspection of the aircraft.

(6) It is found that pursuant to 49 U.S.C. Section 44709 Respondent's above-noted actions prohibiting, interfering with or otherwise failing to allow said inspection of the aforesaid aircraft is grounds for suspending Respondent's Airman Pilot Certificate.

(7) This Judge finds that safety in air commerce or air transportation find the public interest does apparently require the affirmation of the Administrator's Order of Suspension in view of the Respondent's violation of Section 135.75 of the Federal Aviation Regulation.

ORDER

It is ordered that the Administrator's Order of (Whereupon, an off-the-record discussion ensued.)

JUDGE FOWLER: Let the record indicate that counsel for the Respondent has indicated that he will be filing a Notice of Appeal and a brief perfecting that appeal within the parameters of the time that I've just set forth.

If there's nothing further at this time, I will declare this hearing closed. But before we go off the record, I would like once again to thank counsel for both sides for their very diligent, erudite and cogent efforts on behalf of their respective clients.

I would also like to express my thanks to all of the witnesses and parties in the courtroom for their help, assistance and cooperation during the course of this proceeding. Thank you all very much. We stand adjourned.

(Whereupon, the foregoing proceedings concluded at 1:25 p.m.)

Edited
4-9-98
s/Chief Judge William E. Fowler

14 C.F.R. § 135.73 (1996).

Inspections and tests.

Each certificate holder and each person employed by the certificate holder shall allow the Administrator, at any time or place, to make inspections or tests (including en route inspections) to determine the holder's compliance with the Federal Aviation Act of 1958, applicable regulations, and the certificate holders' operating certificate, and operations specifications.

14 C.F.R. § 135.75(a) (1996).

Inspectors credentials: Admission to pilot's compartment: Forward observer's seat.

(a) Whenever, in performing the duties of conducting an inspection, an FAA inspector presents an Aviation Safety Inspector credential, FAA Form 110A, to the pilot in command of an aircraft operated by the certificate holder, the inspector must be given free and uninterrupted access to the pilot compartment of the aircraft. However, this paragraph does not limit the emergency authority of the pilot in command to exclude any person from the pilot compartment in the interest of safety.